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8 Counsel for the Plaintiffs
MARTINA URIBE
9 JUAN URIBE FERNANDEZ
MARIBEL URIBE
10

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
13 **(SAN DIEGO DIVISION)**

14 MARTINA URIBE
JUAN URIBE FERNANDEZ
15 MARIBEL URIBE

16 Plaintiff,

17 v.

18 21st MORTGAGE CORPORATION;
19 DOES 1 THROUGH 10

20
21 Defendants.
22

Case No.: '15CV1268 AJB RBB

COMPLAINT FOR:

1. VIOLATIONS TO THE RFDCPA;
2. INTRUSION UPON SECLUSION;
3. NEGLIGENCE;
4. VIOLATIONS TO THE TCPA;
5. NEGLIGENT TRAINING AND SUPERVISION;
DEMAND FOR JURY TRIAL

23
24
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COMPLAINT

INTRODUCTION

1. Defendants placed at least three-hundred and fifty (350) telephone calls and text messages to Plaintiffs, after they were asked to cease calling, from approximately June to December 2014, in an attempt to collect a debt. This was despite Plaintiff's repeated requests it cease. Defendant placed telephone calls to Plaintiff's cellular phone, and left messages, without their consent. On numerous occasions Defendant would hang up without even leaving a message.
2. Defendants violated the Rosenthal Fair Debt Collection Practices Act (RFDCPA), Telephone Consumer Protection Act, intruded upon Plaintiffs' seclusion and negligently inflicted emotional distress.
3. Defendants' unlawful conduct caused Plaintiff MARTINA URIBE severe and substantial emotional distress, including physical and emotional harm, including but not limited to: anxiety, stress, headaches (requiring ibuprofen), migraine, sleeping issues (requiring over the counter health aids), anger, embarrassment, humiliation, frustration, shame, lack of concentration, amongst other injuries and negative emotions.
4. Defendants' unlawful conduct caused Plaintiff JUAN URIBE FERNANDEZ severe and substantial emotional distress, including physical and emotional harm, including but not limited to: anxiety, stress, sleeping issues (requiring over the counter health aids), anger, embarrassment, humiliation, depression, frustration, shame, lack of concentration, back pain, nervousness, marital problems, loss of enjoyment of life, amongst other injuries and negative emotions.
5. Defendants' unlawful conduct caused Plaintiff MARIBEL URIBE severe and substantial emotional distress, including physical and emotional harm, including but not limited to: anxiety, stress, shoulder pain (requiring ibuprofen), sleeping issues (requiring over the counter health aids), anger,

embarrassment, humiliation, loss of enjoyment of life, frustration, shame, lack of concentration, family problems, amongst other injuries and negative emotions.

6. Defendants have a history and plan of unlawful collection practices. *Hunt v. 21st Mortg. Corp.*, 2014 U.S. Dist. LEXIS 57804 (N.D. CAL 2014).

7. According to the Federal Fair Debt Collection Practices Act, 15 U.S.C.1692, which the RFDCPA incorporates:

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices **contribute to the number of personal bankruptcies**, to marital instability, to the loss of jobs, and to **invasions of individual privacy**.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises under Title 47 U.S.C section 227 (g)(2) and 28 U.S.C. section 1331 and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. section 1367. Defendants have offices and do business here in California, and therefore personal jurisdiction is established.

9. Venue is proper because Defendants regularly transact business in this county and the conduct complained of occurred here.

PARTIES

10. Plaintiff, MARIBEL URIBE (“Maribel”), is a natural person as defined by Cal. Civil Code section 1788.2(g) and resides in in Lawndale, California (Los Angeles County). Plaintiff is also a “debtor” as that term is defined by Cal. Civil Code section 1788.2(h).

1 11.Plaintiff, JUAN URIBE FERNANDEZ (“Juan”), is a natural person as
2 defined by Cal. Civil Code section 1788.2(g) and resides in Lawndale,
3 California (Los Angeles County). Plaintiff is also a “debtor” as that term is
4 defined by Cal. Civil Code section 1788.2(h).

5 12.Plaintiff, MARTINA URIBE (“Martina”), is a natural person as defined by
6 Cal. Civil Code section 1788.2(g) and resides in in Lawndale, California
7 (Los Angeles County). Plaintiff is also a “debtor” as that term is defined by
8 Cal. Civil Code section 1788.2(h).

9 13.Defendant, 21st MORTGAGE (“DEFENDANT”) is a “creditor” and “debt
10 collector” as those terms are defined by Cal. Civil Code sections 1788.2(c)
11 and 1788.2(i). Defendant regularly collects debts on its own behalf, and
12 engages in “debt collection” as that term is defined under Civil Code section
13 1788.2(b).

14 14.Defendants Does 1 through 10 are persons or entities whose true names and
15 capacities are presently unknown to Plaintiff and who therefore are sued by
16 such fictitious names. Plaintiff is informed and believes and thereon alleges
17 that each of the fictitiously named Defendants perpetrated some or all of the
18 wrongful acts alleged herein, is responsible in some manner for the matters
19 alleged herein, and is jointly and severally liable to Plaintiff. Plaintiff will
20 seek leave to amend this complaint to state the true names and capacities of
21 such fictitiously named Defendants when ascertained.

22 15.Plaintiffs allege that at all times herein mentioned, each of the Defendants
23 were, and is now, the agent, servant, employee and/or other representative of
24 the other Defendants, and in doing the things herein alleged, was acting in
25 the scope, purpose and authority of such agency, service, employment,

1 and/or other representative capacity with the permission, knowledge consent
2 and ratification of the other Defendants.

3 16. Defendants authorized, approved and/or ratified the acts herein.

4 17. Any reference hereinafter to “Defendant” or “Defendants” without further
5 qualification is meant by Plaintiffs to refer to all the Defendants above.

6 **FACTUAL ALLEGATIONS**

7 18. Maribel Uribe (“Maribel”) allegedly became indebted to Defendants via a
8 mobile home loan. The alleged “debt” was incurred for personal, family or
9 household purposes and were “consumer credit transactions” as those terms
10 are defined by California Civil Code §§ 1788.2(d) & (e). Defendants were
11 attempting to collect a “debt” as that term is defined by Cal. Civil Code
12 section 1788.2(d).

13 19. Juan Uribe Fernandez (“Juan”) allegedly became indebted to Defendants via
14 a mobile home loan. The alleged “debt” was incurred for personal, family or
15 household purposes and were “consumer credit transactions” as those terms
16 are defined by California Civil Code §§ 1788.2(d) & (e). Defendants were
17 attempting to collect a “debt” as that term is defined by Cal. Civil Code
18 section 1788.2(d).

19 20. Martina Uribe (“Martina”) allegedly became indebted to Defendants via a
20 mobile home loan. The alleged “debt” was incurred for personal, family or
21 household purposes and were “consumer credit transactions” as those terms
22 are defined by California Civil Code §§ 1788.2(d) & (e). Defendants were
23 attempting to collect a “debt” as that term is defined by Cal. Civil Code
24 section 1788.2(d).

1 21. Defendants placed at least one-hundred and fifty three (153) telephone calls
2 and text messages to Plaintiff Maribel, from approximately June to
3 September 2014, in an attempt to collect a debt, despite her requests it cease.

4 22. Defendant also place automated telephone dialing system calls to Plaintiff
5 Maribel's cellular phone, and left messages, without her consent. On
6 numerous occasions Defendants would hang up without even leaving a
7 message.

8 23. On occasion(s) Defendants would call Plaintiff Maribel while she was at
9 work. This was despite Plaintiff's requests Defendant cease calling her while
10 she was at work.

11 24. On occasion(s) Defendants would email Plaintiff Maribel at work. This was
12 despite Plaintiff's requests Defendant cease emailing her at her work email
13 address.

14 25. On occasion(s) Defendants went in person to the home of Plaintiff Juan
15 Uribe (who is Plaintiff Maribel's father) to collect this debt.

16 26. Defendant placed at least one-hundred and eighty seven (187) telephone
17 calls and text messages to Plaintiff Juan, from approximately June to
18 December 2014, in an attempt to collect a debt, despite his requests it cease.

19 27. Defendant also place automated telephone dialing system calls to Plaintiff's
20 cellular phone, and left messages, without his consent. On numerous
21 occasions Defendants would hang up without even leaving a message.

22 28. Defendant placed at least ten (10) telephone calls to Plaintiff Martina
23 (Plaintiff Maribel's mother, and Plaintiff Uribe's wife), from approximately
24 June to August 2014, in an attempt to collect a debt, despite her requests it
25 cease.

26 29. Defendant also place automated telephone dialing system calls to Plaintiff's
27 cellular phone without her consent. On occasions Defendants would hang
28 up without even leaving a message.

FIRST CLAIM FOR RELIEF - RFDCPA

Rosenthal Fair Debt Collection Practices Act (Cal. Civil Code §1788 et seq.)

30.Plaintiff repeats and re-alleges, and incorporates by reference all the paragraphs above.

31.Defendants’ acts and omissions, and course of conduct, as more fully described above, constitute numerous and multiple violations of the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) et seq., including, but not limited to, the violations of §§ 1788 et seq., §§ 1788.11 and 1788.17.

32.Defendants violated California Civil Code § 1788.11, including 1788.11(d) and (e) by causing a telephone to ring repeatedly or continuously to annoy the person called; and communicating by telephone, with Plaintiff with such frequency as to be unreasonable frequency as to constitute a harassment under the circumstances.

33.Defendants violated California Civil Code § 1788.17 (via incorporation of 15 U.S.C. 1692d), by engaging in conduct the natural consequence of which is to annoy, harass, oppress and abuse, including, but not limited to: failing to cease and desist, placing repeated and continuous telephone calls despite requests to cease, and calling at inconvenient times, and failing to meaningfully identify itself.

34.Defendants violated California Civil Code § 1788.17 (via incorporation of 15 U.S.C. §1692e), by making false, deceptive and/or misleading representations in an attempt to collect a debt, and taking action they could not legally take.

1 35. Defendants violated California Civil Code § 1788.17 (via incorporation of
2 15 U.S.C. § 1692f), by engaging in an unfair and unconscionable act in an
3 attempt to collect a debt.

4 36. As a result of Defendants' violations, Plaintiff is entitled to recover statutory
5 damages, actual damages, reasonable attorney's fees, and costs, pursuant to
6 Cal. Civil Code sections 1788.17 and 1788.30 (via incorporation of 15
7 U.S.C. 1692k).

8 **SECOND CLAIM FOR RELIEF – INTRUSION UPON SECLUSION**

9 37. Plaintiffs repeats, re-alleges, and re-incorporates by reference all of the
10 paragraphs above as though fully stated herein.

11 38. Our legislature explicitly recognized a consumer's inherent right to privacy
12 in collection matters in passing the Rosenthal Fair Debt Collection Practices
13 Act and incorporating most of the Federal Act's provisions into the
14 California's Fair Debt Collection Practices Act, when Congress stated, as
15 part of its findings:

16 **Abusive debt collection practices contribute** to
17 the number of **personal bankruptcies**, to marital
18 instability, to the loss of jobs, and **to invasions of**
19 **individual privacy**. 15 U.S.C. § 1692(a) (emphasis
added).

20 39. According to findings by the FCC, the agency Congress vested with
21 authority to issue regulations implementing the TCPA, such calls are
22 prohibited because, as Congress found, automated or prerecorded telephone
23 calls are a greater nuisance and invasion of privacy than live solicitation
24 calls, and such calls can be costly and inconvenient.¹

25 ¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG
Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).
COMPLAINT

1 40. Defendants intentionally interfered, physically or otherwise, with the
2 solitude, seclusion of Plaintiff, namely, by engaging in unlawful and
3 intrusive communications.

4 41. Defendants intentionally caused harm to Plaintiffs' emotional well-being by
5 engaging in highly offensive conduct in the course of collecting this debt,
6 and thereby invaded and intruded upon Plaintiffs' rights to privacy.

7 42. Plaintiffs have a reasonable expectation of privacy in their individual
8 solitude, seclusion, and or private concerns or affairs.

9 43. These intrusions and invasions against Plaintiffs by Defendants occurred in a
10 way that would be highly offensive to a reasonable person in that position.

11 44. As a result of such invasions of privacy, Plaintiffs are entitled to actual
12 damages in an amount to be determined at trial from each and every
13 Defendant.

14 45. Defendants also acted with oppression, fraud, and/or malice, thereby
15 entitling Plaintiffs to punitive damages in an amount according to proof and
16 a finder of fact at trial.

17 **THIRD CLAIM FOR RELIEF - NEGLIGENCE**

18 46. Plaintiffs incorporate by reference the above paragraphs as though fully
19 stated herein below.

20 47. Defendants' outrageous, abusive and intrusive acts as described herein
21 constituted negligence.

22 48. Defendants negligently inflicted emotional distress upon Plaintiff(s).

23 49. Defendants breached a duty imposed and failed to exercise ordinary care.

24 50. Defendants owed Plaintiff(s) a duty to refrain from unlawful debt collections
25 (California Civil Code §1788 et seq.) and unlawful telephone conduct (Penal

1 Code §653m and the Telephone Consumer Protection Act 47 U.S.C.
2 §227(b)(1)(A)).

3 51.The breach of such duty proximately caused injury to Plaintiff(s).

4 52.The injury resulted from an occurrence the nature of which these statutes
5 were designed to protect Plaintiff(s) from.

6 53.Plaintiffs are members of the class of persons the statutes were designed to
7 protect.

8 54.Defendants' conduct, as described herein, was wrongful conduct in that the
9 Defendants conducted their business in an abusive, oppressive, and
10 harassing manner.

11 55.As a direct and proximate result of Defendants' unlawful conduct,
12 Plaintiff(s) has suffered damages in an amount to be determined at trial.
13 Defendants' wrongful conduct as described herein actually and proximately
14 caused Plaintiff(s) harm, as noted above.

15 56.Defendants acted with oppression, and/or malice, thereby entitling
16 Plaintiff(s) to punitive damages in an amount to be determined at trial.
17 Defendants acted in a despicable manner and acted with a conscious
18 disregard to Plaintiffs' rights.

19 **FOURTH CLAIM FOR RELIEF - TCPA**
20 *(Telephone Consumer Protection Act)*

21 57.Plaintiffs repeat, re-allege and incorporate by reference all other paragraphs.

22 58.At all times relevant to this complaint, Plaintiffs were and are "person[s]" as
23 defined by the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §
24 153(32).

25 59.At all times relevant to this complaint, the Defendants have owned,
operated, and or controlled "customer premises equipment" as defined by

1 the TCPA, 47 U.S.C. § 153(14) that originated, routed, and/or terminated
2 telecommunications.

3
4 60.The Defendants at all times relevant to the complaint herein engaged in
5 “telecommunications” defined by the TCPA, 47 U.S.C § 153(43).

6 61.The Defendants at all times relevant to this Complaint engaged and engages
7 in “interstate communications” by the TCPA, 47 U.S.C. § 153(22).

8
9 62.At all times relevant to this Complaint, Defendants used, controlled, and/or
10 operated “wire communications” as defined by the TCPA, 47 U.S.C. §
11 153(52), that existed as instrumentalities of interstate and intrastate
12 commerce.

13
14 63.At all times relevant to this complaint, the Defendants used, controlled,
15 and/or operated “automatic telephone dialing systems” as defined by the
16 TCPA, 47 U.S.C. § 227(a)(1) and 47 C.F.R. § 64.1200 (f)(1).

17
18 64.Defendants violated the TCPA, 47 U.S.C. § 227(b)(1)(A), by using an
19 automatic telephone dialing system to telephone cellular phone(s), without
20 Plaintiff(s)’ consent or for emergency purposes.

21 65.Defendants’ violations were willful and knowing.

22
23 66.As a result of these violations of the TCPA, Defendants are liable to
24 Plaintiff(s) for statutory damages, including treble damages.

25 67.Defendants engaged in willful and knowing violations of the TCPA, 47
U.S.C. § 227(b)(1)(A).

COMPLAINT

1 68. Defendants used an automated telephone dialing system and pre-recorded
2 messages to telephone Plaintiff(s)' cellular telephone, without consent.

3 69. Defendants' acts were willful, intentional and knowing.

4 70. Defendants acted with oppression, fraud, and/or malice, thereby entitling
5 Plaintiffs to punitive damages in an amount according to proof and a finder
6 of fact at trial.

7 71. Plaintiffs are entitled to recover actual and punitive damages.

8 **FIFTH CLAIM FOR RELIEF – NEGLIGENT TRAINING AND**
9 **SUPERVISION**

10 72. Plaintiffs incorporate by reference the above paragraphs as though fully
11 stated herein below.

12 73. Defendants negligently trained and supervised their employees and agents as
13 to the performance of their job duties and as a result of such negligent
14 instruction and supervision, the employees/agents while carrying out their
15 job duties caused injury and damage to Plaintiff(s).

16 74. Defendants' employees and agents' outrageous, abusive and intrusive acts as
17 described herein constituted negligence.

18 75. Defendants' employees and agents' negligently inflicted emotional distress
19 upon Plaintiff(s).

20 76. Defendants' employees and agents' breached a duty imposed and failed to
21 exercise ordinary care.

22 77. Defendants employees and agents' owed Plaintiff(s) a duty to refrain from
23 unlawful debt collections (California Civil Code §1788 et seq.) and unlawful
24 telephone conduct (Penal Code §653m and the Telephone Consumer
25 Protection Act 47 U.S.C. §227(b)(1)(A)).

78. Defendants negligently trained its employees.

79. Defendants negligently supervised its employees.

80. The breach of such duty proximately caused injury to Plaintiff(s).

1 81.The injury resulted from an occurrence the nature of which these statutes
2 were designed to protect Plaintiff(s) from.

3 82.Plaintiffs are members of the class of persons the statutes were designed to
4 protect.

5 83.Defendants' employees and agents' conduct, as described herein, was
6 wrongful conduct in that the Defendants conducted their business in an
7 abusive, oppressive, and harassing manner.

8 84.As a direct and proximate result of Defendants' employees and agents'
9 unlawful conduct, Plaintiff(s) has suffered damages in an amount to be
10 determined at trial. Defendants' wrongful conduct as described herein
11 actually and proximately caused Plaintiff(s) harm, as noted above.

12 85.Defendants' employees and agents' acted with oppression, and/or malice,
13 thereby entitling Plaintiff(s) to punitive damages in an amount to be
14 determined at trial. Defendants acted in a despicable manner and acted with
15 a conscious disregard to Plaintiffs' rights.

16 ///

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, respectfully prays that judgment be entered
19 against the Defendants for the following:

20 A. Actual, statutory and punitive damages.

21 B. Statutory damages pursuant to Civil Code §§ 1788.30(b) and
22 1788.17 (via incorporation of 15 U.S.C. §1692k);

23 C. Statutory damages pursuant to the TCPA (including a trebling of
24 those damages);

25 C. Punitive damages, pursuant to Cal. Civil Code §3294;

COMPLAINT

1 D. Costs and reasonable attorney's fees pursuant to Cal. Civil Code §§

2 1788.30 and 1788.17 (via incorporation of §15 U.S.C. 1692k);

3 E. Injunctive relief pursuant to 47 U.S.C. 227(b)(3)(A), and;

4 F. For such other and further relief as may be just and proper.

5
6
7 Respectfully submitted,

8 June 7, 2015

9 Date

/S/ Ivan M. Lopez Ventura

Ivan M. Lopez Ventura, Counsel for Plaintiff

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15
16 **DEMAND FOR JURY TRIAL**

17 Please take notice that Plaintiff demands trial by jury in this action.

18
19
20 June 7, 2015

21 Date

/S/ Ivan M. Lopez Ventura

Ivan M. Lopez Ventura, Counsel for Plaintiff

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